

FEB 20 2004

RECEIVED
IN THE COURT OF APPEALS FOR THE
SECOND COURT OF APPEALS DISTRICT OF TEXAS
Stephanie Lavake, Clerk

BARTON RAY GAINES, 20 P4:45
APPELLANT

v. FORT WORTH, TEXAS
STEPHANIE LAVAKE, CLERK

THE STATE OF TEXAS,
APPELLEE

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No. 02-02-00498-CR

No. 02-02-00499-CR

MOTION TO ALLOW LATE FILING OF STATE'S LETTER BRIEF
TO THE HONORABLE COURT OF APPEALS:

The State requests that the Court allow the State to file its letter brief in this case late. The following allegations are made in support of this motion:

- I -

The court below is the 213th District Court of Tarrant County, Texas. The style of the case in the trial court is State v. Barton Ray Gaines, cause numbers 0836985A and 0836979A.

- II -

Appellant was convicted of two charges of armed robbery. He pled guilty and went to a jury for punishment. He was sentenced to thirty-five years in prison (concurrently). He is incarcerated.

- III -

Appellant's appellate counsel filed an Anders¹ brief on May 16, 2003. After being notified by this Court of his right to do so, Appellant filed a *pro se* brief on December 11, 2003. The State's brief was due on January 28, 2004.

- IV -

This is the State's first motion for extension of time regarding this case.

- V -

The date of submission has not yet been set.

- VI -

This brief is not filed late for purposes of delay. Appellant did not serve a copy of his brief on the appellate section of the criminal district attorney's office. *See* TEX. R. APP. P. 6.3(a) (documents to be sent to each party's lead counsel on appeal).² Accordingly, the undersigned attorney was unaware a brief was filed until further communication with this Court earlier in the week.³

Therefore, the State prays that this Court grant this Motion to Allow Late filing of the State's Letter Brief and extend the time for filing of the State's brief to February 20, 2004.

¹Anders v. California, 386 U.S. 738 (1967).

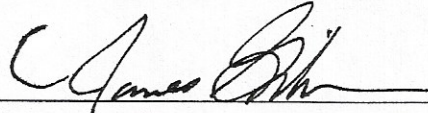
²According to Appellant's certificate of service, he did send a copy of his brief to Lesa Pamplin. App. brief at 23. Ms. Pamplin is indeed an Assistant Criminal District Attorney, but we are unaware of any connection she has (or had) to Appellant's case. In any event, it is **strange** because Appellant has sent copies of previous *pro se* appellate pleadings to Charles Mallin of the district attorney's appellate division.

³It should be noted that the State overlooked a transmittal letter from this Court indicating that Appellant's brief had actually been filed.

Respectfully submitted,

TIM CURRY
Criminal District Attorney
Tarrant County, Texas

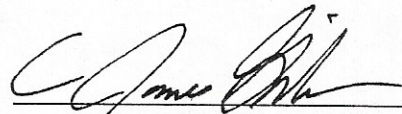
CHARLES M. MALLIN
Chief of the Appellate Section



C. James Gibson, Assistant
Criminal District Attorney
State Bar No. 00787533
401 W. Belknap
Fort Worth, Texas 76196-0201
(817) 884-1687
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CERTIFICATE OF SERVICE

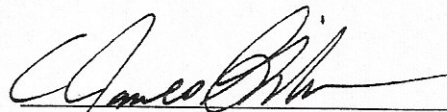
Copies of the State's motion have been mailed to Appellant's appellate attorney, Hon. Paul Francis, 760 N. Fielder Rd., Arlington, Texas 76012, and to Appellant Mr. Barton Ray Gaines, CID #0579723, Tarrant County Jail, 100 N. Lamar St., Fort Worth, Texas 76102 on February 20, 2004.



C. James Gibson

CERTIFICATE OF CONFERENCE

Because Mr. Gaines is in jail, I have not attempted to speak with him.



C. James Gibson